IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

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| JOHN COOPER, | : | |
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| Plaintiff | : | CIVIL NO. 3:CV-13-2154 |
| | : | |
| v. | : | |
| | : | (Judge Conaboy) |
| | : | |
| STATE OF PENNSYLVANIA, ET AL., | : | |
| | : | |
| Defendants | : | |

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**MEMORANDUM**
**Background**

John Cooper, an inmate presently confined at the State Correctional Institution, Frackville, Pennsylvania (SCI-Frackville) initiated this pro se civil rights action pursuant to 42 U.S.C. § 1983. Named as Defendants are the Commonwealth of Pennsylvania, and two SCI-Frackville officials, Superintendent Tritt and Business Manager Dorzinsky. Accompanying the Complaint is a request for leave to proceed in forma pauperis. See Doc. 2. For the reasons that follow, Plaintiff's action will be dismissed without prejudice.

Plaintiff vaguely claims that in 1985 the United States Supreme Court ordered that he be discharged from prison at the age of 54. See Doc. 1, ¶ IV (1). Cooper lists his year of birth as being 1958 and indicates that he was to have been discharged "from

Farview in 2006" or between October 11, 2012-October 10, 2013. Id. at (2). Cooper additionally requests that the "Business Manager" (presumably at SCI-Frackville) transfer $2,000.00 to his "exposed" account and that said official be investigated by the Federal Bureau of Investigation (FBI). Id. at (3).

As relief Plaintiff seeks dismissal of his criminal conviction, a pardon, his immediate release from confinement as well as compensatory and nominal damages.

**Discussion**

When considering a complaint accompanied by a motion to proceed in forma pauperis, a district court may rule that process should not issue if the complaint is malicious, presents an indisputably meritless legal theory, or is predicated on clearly baseless factual contentions. 28 U.S.C. § 1915(e)(2); Neitzke v. Williams, 490 U.S. 319, 327-28 (1989), Douris v. Middleton Township, 293 Fed. Appx. 130, 132 (3d Cir. 2008). Indisputably meritless legal theories are those "in which either it is readily apparent that the plaintiff's complaint lacks an arguable basis in law or that the defendants are clearly entitled to immunity from suit ... ." Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990) (quoting Sultenfuss v. Snow, 894 F.2d 1277, 1278 (11th Cir. 1990)).

It is initially noted that these same Defendants and allegations were included in a prior civil rights action filed by Cooper which was dismissed as frivolous by this Court. See Cooper v. State of Pennsylvania, et al., Civil No.3:CV-13-2153 (Oct. 18,

2013) (Conaboy, J.)

**Habeas Corpus**

As previously discussed by this Court's October 18, 2013 Memorandum and Order, Cooper seeks in part his immediate release, a pardon, and the dismissal of his underlying criminal conviction. See Doc. 1, ¶ V. Inmates may not use civil rights actions to challenge the fact or duration of their confinement or to seek earlier or speedier release. Preiser v. Rodriguez, 411 U.S. 475 (1975). The United States Court of Appeals for the Third Circuit has similarly recognized that civil rights claims seeking release from confinement sounded in habeas corpus. See Georgevich v. Strauss, 772 F.2d 1078, 1086 (3d Cir. 1985).

The United States Supreme Court in Edwards v. Balisok, 520 U.S. 641, 646 (1997), similarly concluded that a civil rights claim for declaratory relief "based on allegations ... that necessarily imply the invalidity of the punishment imposed, is not cognizable" in a civil rights action. Id. at 646. Based on the reasoning announced in Georgevich and Edwards, Plaintiff's present claims of illegal confinement and related requests to be released, pardoned and have his criminal conviction overturned are not properly raised in a civil rights complaint. Accordingly, those claims will be dismissed without prejudice to any right Cooper may have to pursue said allegations via a federal habeas corpus petition.

**Commonwealth of Pennsylvania**

The United States Supreme Court has ruled that a civil rights

action brought against a "State and its Board of Corrections is barred by the Eleventh Amendment unless [the State] has consented to the filing of such a suit." Alabama v. Pugh, 438 U.S. 781, 782 (1978). In Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989), the Supreme Court established "that the State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity" are not subject to civil rights liability in federal court. Howlett v. Rose, 496 U.S. 356, 365 (1990). Accordingly, the Commonwealth of Pennsylvania is not a properly named Defendant in this matter.

**Personal Involvement**

Also named as Defendants are SCI-Frackville Superintendent Tritt and Business Manager Dorzinsky. However, there are no factual allegations set forth in the Complaint which allege that either of those Defendants had personal involvement in any violation of the Plaintiff's constitutional rights.

A plaintiff, in order to state an actionable civil rights claim, must plead two essential elements: (1) that the conduct complained of was committed by a person acting under color of law, and (2) that said conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995); Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1141-42 (3d Cir. 1990).

Federal civil rights claims brought under § 1983 cannot be

premised on a theory of respondeat superior. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Rather, each named defendant must be shown, via the complaint's allegations, to have been personally involved in the events or occurrences which underlie a claim. See Rizzo v. Goode, 423 U.S. 362 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). As explained in Rode:

> A defendant in a civil rights action must have personal involvement in the alleged wrongs. . . . [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

Rode, 845 F.2d at 1207.

As noted above, there are no factual assertions set forth which could support a claim that Superintendent Tritt had any personal involvement in any acts of constitutional misconduct. Accordingly, it appears that Cooper is attempting to establish liability against Superintendent Tritt solely on the basis of his supervisory capacity within SCI-Frackville. Accordingly, under the personal involvement pleading requirements of Rode, dismissal will be granted in favor of Defendant Tritt.

The Complaint also includes a vague request that the Business Manager should transfer $2,000.00 to his exposed account and be investigated by the FBI. Without unnecessary elaboration, this allegation simply does not include any facts which could support a

claim that Defendant Dorzinsky somehow violated Plaintiff's constitutional rights. Moreover, this vague assertion regarding a Business Manager simply seems to be part of an imaginary scenario created by Cooper. Defendants Tritt and Dorzinsky are entitled to entry of dismissal on the basis of lack of personal involvement.

**Heck**

Additionally, in Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court ruled that a constitutional cause of action for damages does not accrue "for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," until the plaintiff proves that the "conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486-87.

As previously noted, Cooper raises a vague, if not delusional claim that the United States Supreme Court ordered his release over twenty-five years ago in 1985. Based on the nature of Plaintiff's allegations, a finding in his favor would imply the invalidity of his ongoing state confinement. There is no indication that Cooper has successfully challenged either his state criminal conviction or the length of his ongoing incarceration.

Pursuant to Heck, Cooper's action to the extent that it seeks an award of monetary damages on the basis of illegal confinement is

premature because he cannot maintain a cause of action for an unlawful conviction or an excessive imprisonment until the basis for the conviction and imprisonment is overturned.

**Res Judicata**

The complex doctrine of res judicata restricts relitigation of issues. Res judicata requires "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action." United States v. Athlone Indus., Inc., 746 F.2d 977, 983 (3d Cir. 1984).

Res judicata precludes a party both from relitigating matters already litigated and from litigating matters that have never been litigated, yet should have been advanced in an earlier suit. Huck v. Dawson, 106 F.3d 45 (3d Cir. 1997) (quoting Julien v. Committee of Bar Examiners, 923 F. Supp. 707, 716 (D.VI 1996)).

The claims presently asserted were among the same allegations which were raised and dismissed by this Court in Plaintiff's earlier action, M. D. Pa. Civil Action No. 3:CV-13-2153. Moreover, the same Defendants are named in both actions. Accordingly, since there was a final judgment on he merits entered in Plaintiff's prior suit, it appears that the doctrine of res judicata precludes further consideration of Plaintiff's pending claims.

**Conclusion**

Since Cooper's civil rights complaint is "based on an indisputably meritless legal theory," it will be dismissed, without prejudice, as legally frivolous. Wilson, 878 F.2d at 774. An

appropriate Order will enter.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge

DATED: APRIL 7, 2014